

**REMARKS**

Claims 1, 2, 4, 6, 13, 14, and 16-27 are pending in the present application. In the Office Action mailed May 11, 2005, claims 1, 2, 4, 6, 13, 14 and 16-27 were rejected. Reconsideration of the present application in view of the response that follows is respectfully requested.

Claims 1, 2, 4, 6, 13-14 and 16-27 were rejected under the judicially created doctrine of double patenting in view of U.S. Patent No. 6,669,698. The '698 patent issued from the parent of the present application and is commonly owned therewith. Enclosed herewith is a terminal disclaimer, and withdrawal of the double patenting rejection is respectfully requested.

Claim 1 has been amended to include the article "a" before the recitation of "first guide. The amendment to claim 1 is provided to improve form and readability, and is not a narrowing amendment nor has it been made for reasons related to patentability of claim 1.

Claims 1, 4, 6, 26 and 27 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 4,708,139 to Dunbar, IV. Dunbar discloses that one of the members includes a probe tip 41 that is aligned with an axis defined by the cannula 71 of the other member. When the surgeon drills through cannula 71, the drill exits the bone at the location occupied by probe tip 71. If the hole is drilled through the bone, probe tip 41 cannot remain in contact with the bone since the location on the bone engaged by the tip is removed. Accordingly, tip 41 is not aligned with cannula 71, but rather is aligned with the central axis defined by cannula 71.

Claim 1 recites 'a first member having a first guide adapted to contact the first vertebral bone portion; a second member having a second guide aligned with the first guide and adapted to contact the second vertebral bone portion...' The guides recited in claim 1 are aligned with one another, and the apparatus can thus be employed for formation of the hole through the vertebral bone portions through the guides and also for insertion of the fastener while the guides remain in contact with the vertebral bone portions. Since Dunbar does not disclose first and second guides aligned with one

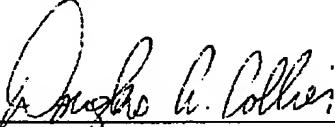
another, it cannot anticipate claim 1. Accordingly, withdrawal of this basis of the rejection is respectfully requested.

Claims 4, 6, 26 and 27 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable and for other reasons. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

Claims 38-47 have added in this application. Claims 38-40 depend from claim 1 and are allowable at least because claim 1 is allowable. Claim 41 and claims 42-47 depending therefrom present subject matter also believed allowable.

Allowance of the present application, including claims 1, 2, 4, 5, 13, 14, 16-27 and 38-47 is respectfully requested. A Notice of Allowance is respectfully solicited. Should it facilitate allowance of the application, the Examiner is invited to telephone the undersigned.

Respectfully submitted:

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